

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE: CROP INPUTS ANTITRUST
LITIGATION

Case No. 4:21-md-02993-SEP

MDL No. 2993

This Document Relates To:

ALL CASES

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs submit this Notice of Supplemental Authority in further support of their Opposition to Defendants' Joint Motion to Dismiss, ECF No. 141.

On January 12, 2024, the United States District Court for the Middle District of North Carolina entered a Memorandum Opinion and Order (the "FTC Opinion") denying Defendants' Motions to Dismiss claims made against Syngenta Crop Protection AG, Syngenta Corporation, Syngenta Crop Protection, LLC, and Corteva, Inc. *FTC et al. v. Syngenta Crop Protection AG*, 1:22CV828, ECF No. 160 (M.D.N.C. Jan. 12, 2024) [**attached hereto as Exhibit 1**]. Although the FTC Opinion is from a court outside of this District, the opinion's reasoning addresses cases from multiple circuits and is persuasive authority bearing on the issues presented in this case at the motion to dismiss stage.

In this case, two central issues in the parties' briefing on Defendants' Motion to Dismiss were (1) whether Plaintiffs' allegations of Defendants' alleged parallel conduct supported a plausible conspiracy, and (2) whether the Crop Inputs market was adequately defined. (Pls.' Mem. in Opp'n to Defs.' Joint Mot. to Dismiss Pls.' Consol. Class Action Compl., 19, 12-22, ECF No. 164.)

The court in the FTC action affirmed that the assessment of adequate market definition at the motion to dismiss stage is a “fact-intensive inquiry” and that “the scope of the relevant product market differs on a case-by-case basis.” (FTC Opinion, p. 25). The court also pointed to the Fourth Circuit’s assessment that “[b]ecause market definition is a deeply fact-intensive inquiry, courts hesitate to grant motions to dismiss for failure to plead a relevant product market.” (FTC Opinion, p. 25 (citing *E.I. du Pont de Nemours and Co. v. Kolon Indus.*, 637 F.3d 435, 442 (4th Cir. 2011)).

The court in the FTC action also rejected the defendants’ challenge to the plausibility of the plaintiffs’ allegations, highlighting that the claims were supported by ample factual allegations. The court held that plaintiffs’ allegations of defendants’ loyalty programs causing substantial foreclosure of the generic herbicide market were plausible and, moreover, that defendants’ attacks on plausibility “turn[] on a factual dispute ill suited for the pleadings stage.” (FTC Opinion, p. 65) (citing *FTC v. Surescripts, LLC*, 424 F.Supp.3d 92, 104 (D.D.C. 2020). Similarly, the court found that defendants’ contentions regarding the pro-competitive effects or the absence of anticompetitive injury caused by the loyalty discount programs at the center of the FTC action “depended on further factual development” at the motion to dismiss stage. (FTC Opinion, p. 67).

Plaintiffs therefore respectfully submit that this Court should consider the FTC Opinion as supplemental authority.

Dated: January 26, 2024

Respectfully submitted,

s/ Derek Y. Brandt

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CERTIFICATE OF SERVICE

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s/ Derek Y. Brandt
